IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5144 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANAGING DIRECTOR

Versus

VANMALIBHAI VAJUBHAI BAROLIYA

Appearance:

1. Special Civil Application No. 5144 of 2004

MR HASMUKH THAKKER for Petitioner No. 1-2

MR DS VASAVADA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 26/04/2004

ORAL JUDGEMENT

1. Rule. Mr. Vasavada, learned advocate waives service of rule on behalf of the respondent. With the

consent of learned advocates appearing for the parties, this matter is taken up for final disposal.

2. Short facts of the case are that:

The respondent preferred Recovery Application being Recovery Application No. 96 of 2000 before the Labour Court for recovery of the amount of Rs.1,72,098/_ with interest at 18%. The petitioner herein was given opportunity, and it is the case of the petitioner that an advocate was engaged by the petitioner in the said matter, but the advocate of the petitioner did not remain present, and as a result thereof, the matter proceeded exparte, and ultimately an was order passed by the Labour Court on 21.08.2003 whereby the petitioner is ordered to pay an amount of Rs.1,08,446/_ with interest at 12% to the respondent. The petitioner preferred Misc. Application, being No. 13 of 2003 for restoration and for setting aside of the exparte order. The Labour Court passed an order on 9.2.2004 whereby the restoration application of the petitioner has been dismissed, and hence this petition.

3. I have heard Mr. Thakkar for the petitioner and Mr. Vasavada for the respondent.

4. It appears that there is no dispute on the point that the learned advocate who was engaged to defend the proceedings by the petitioner did not participate in the proceedings and the matter proceeded ex-parte. Further the Labour Court has found that if the advocate of the petitioner did not properly defend the proceedings, the same cannot be a ground for getting away from the information and liability pertaining to the progress of the litigation. The Labour Court found that the contention that the petitioner had no information cannot be accepted, and the Labour Court found that there is no sufficient case made out, and hence the application for restoration was rejected.

5. It appears that the Labour Court has not considered the aspect as to whether the default caused in not properly defending the proceedings can be compensated by awarding suitable costs to the other side or not. Moreover, the Labour Court has also not considered that for the default caused by the advocate, as far as possible, the Court may see that the litigant is not made to suffer unless irreversible situation has arisen on account of the lapse or default on the part of the lawyer. Even this Court in its judgment and order dated 3.11.2003 passed in Special Civil Application No. 6873

of 2003 has taken a view that while considering the matter for setting aside exparte order, the Court should consider the aspect as to whether the default is such which can be compensated in terms of money by awarding suitable costs or not.

6. Considering the facts and circumstances, and keeping in view the aforesaid decision, it appears that had the Labour Court considered the said aspect, appropriate costs by way of compensation, for default caused for not properly defending the proceedings before the Labour Court in Recovery Application, could have been ordered. Keeping in view the subject matter of the Recovery Application, I find that for causing default in not properly defending the proceedings before the Labour Court in Recovery Application No. 96 of 2000, the appropriate costs by way of compensation would be Rs.5000/_. Moreover, because of the default caused by the petitioner, the respondent herein is made to face the present proceedings before this Court, even if the matter is considered for remand, the workman would be entitled to reasonable costs even for the present litigation before this Court.

7. Further, this Court in the above referred decision, has also taken a view that if the matter is remanded unconditionally without imposing a condition to deposit some percentage of the amount ordered and if a lenient view is taken the same would encourage dilatory tactics on the part of the litigants and it would enable the defaulting party to take a premium of its own default. In the above referred decision, the Court had imposed a condition to deposit 25% of the ordered amount. In the present case, since the amount ordered is Rs.1,08,000/_ I find that even if the matter is considered for remanding the case to the Labour Court, the petitioner should be put to condition of depositing Rs.30,000/_ with the Labour Court and the said amount may be invested in a Fixed Deposit subject to final out come of the proceedings after remand.

8. The learned counsel appearing for both the sides have assured for co-operating with the proceedings before the Labour Court, if remanded by this Court, and since the matter is remanded, it would be just and proper if the Labour Court is directed to decide the Recovery Application within some stipulated time limit.

9. In view of the aforesaid, I find that the following order would meet with the ends of justice:

[i]. The order dated 9.2.2004 in Misc. Application No. 13 of 2003 as well as the order dated 21.3.2003 in Recovery Application No. 96 of 2000 passed by the Labour Court, Bhavnagar, are quashed and set aside on condition that:

[a]. The petitioner pays directly to the respondent within four weeks from today by accounts payee cheque an amount of Rs.10,000/_ as compensation for the default in not defending the proceedings in Recovery Application No. 96/00 and the cost of litigation before this Court.

[b]. The petitioner deposits within four weeks from today an amount of Rs.30,000/_ with the Labour Court.

[ii]. The aforesaid shall be with a further direction that the Main Recovery Application No. 96 of 2000 shall be restored to the file of the Labour Court and the Labour Court shall decide the same as early as possible after giving opportunity of hearing to both the sides, and shall pass an order in accordance with law, preferably within a period of six months from the date of receipt of the order of this Court.

[iii]. The Labour Court shall deposit the amount of Rs.30,000/_ in a Fixed Deposit Receipt with any nationalized Bank initially for a period of six months, and the said amount of Rs.30,000/_ shall be subject to the final order which may be passed by the Labour Court after remand.

10. This petition stands disposed of with the aforesaid direction. Rule made absolute accordingly.

[JAYANT PATEL, J.]

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